



The Commonwealth of Massachusetts Department of State Police

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COMMONWEALTH OF MASSACHUSETTS

May 13, 2019

SECRETARY OF THE COMMONWEALTH
SUPERVISOR OF PUBLIC RECORDS
RAO.Petitions@sec.state.ma.us
RE: SPR19/0665

DEPARTMENT OF STATE POLICE'S SUPPLEMENTAL RESPONSE TO DENIAL TO ASSESS FEE PETITION.

Pursuant to the Supervisor of Records' letter dated May 6, 2019, the Department of State Police (Department) hereby issues this supplemental response to the Supervisor of Public Records' denial to assess a fee petition for costs associated with responding to a public records request submitted by Mr. Daniel Kaufman on February 11, 2019. The Department incorporates by reference its previous responses.

On March 28, 2019, the Department submitted fee petitions seeking approval to charge Mr. Kaufman to fulfill his request. The Supervisor of Public Records, citing 950 C.M.R. 32.06(4)(g), denied this petition based on the fact that it was submitted more than ten business days after receipt of the request. However, it should be noted that the Department was not required to submit a fee petition to the Supervisor of Records and was only submitting a fee petition in an abundance of caution. The Department's common practice is to submit a fee petition in order to work with your office and the requester. Notwithstanding, the Department routinely states that the fee petition is being submitted in an abundance of caution, and that review and the redaction of information from the records is, in fact, required by law. The Department's initial response included the following language: "Given the nature of the records at issue, we will undoubtedly be required to redact information not subject to disclosure by law, and are therefore entitled to impose a fee for the compilation, review, and segregation of the records."

Under 950 CMR 32.07(d), the Department is permitted to assess a fee for time spent segregating and redacting records without petitioning the Supervisor when such segregation or redaction is required by law. Given the nature of the records sought by Mr. Kaufman, segregation and redaction is required under various Massachusetts laws including, but not limited to, M.G.L. c. 6, s. 167-178B (CORI) and M.G.L. c. 66A, s. 2 (Fair Information Practices Act). It should be noted that the Department relied on 950 CMR 32.07(d) and provided Mr. Kaufman with an initial fee estimate within 6 business days of the Department receiving his request and later submitted a fee petition to the Supervisor of Records in an abundance of caution and to prevent any confusion.

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Additionally, even if a determination is made that segregation and redaction is not required by law and a fee petition was required, there is no prohibition under Massachusetts law that the parties cannot agree to extend the 10 day deadline for a fee petition. In fact, the manner in which both parties communicated and agreed to extend the deadline fully comports with the spirit of the public records laws and also aligns with the type of conduct that is routinely encouraged by the Supervisor of Public Records. I would again emphasize that from the time the Department received this request, there was immediate and ongoing amicable communication between Mr. Kaufman and the Department from the time this request was received. Therefore, even if the 10 day requirement were not rendered moot by the fact that segregation and redaction is required by law, there was a lawful, valid, and agreed upon extension of the deadline which was met by the Department.

In conclusion, it is the Department's official position that a fee petition is permitted without the approval of the Supervisor of Records given that segregation and redaction is required by law. Still, given the lack of any law or regulation prohibiting an agreed upon extension combined with the nature of the communications between both parties, the Department again requests that the Supervisor of Public Records reconsider its ruling in this matter with respect to the 10-day deadline.

Thank you,

Jason Stelmat
Privacy Officer
Commonwealth Fusion Center
Department of State Police

Cc: Daniel Kaufman